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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,398	08/15/2001	Christine Carlucci	866.0002	1023
7590	01/11/2005		EXAMINER	
Marguerite Del Valle Power Del Valle LLP 233 West 72 Street New York, NY 10023			EREZO, DARWIN P	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/930,398	CARLUCCI ET AL.	
	Examiner	Art Unit	
	Darwin P. Erezo	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 October 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-14 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. In view of the appeal brief filed on 10/21/04, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 6-9 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,411,484 to Shattuck.

(claim 1) Shattuck teaches a device to secure medical tubing to a body comprising a one-piece fabric band (the band is formed with tricot fabric) having at least a first closed loop (formed when the cincture 1 is wrapped around a user's head) and a second closed loop 3, wherein the first closed loop fits elastically around a portion of the body and the second closed loop is capable of receiving and holding medical tubing close to the body. The band is inherently elastic since Shattuck teaches that the device is resilient (col. 3, lines 55-56), which definition is: returning to the original form or position after being bent, compressed or stretched; elasticity.

(claim 2) Shattuck teaches a portion of the body being a head.

(claim 3) Shattuck teaches the fabric band comprising non-irritating material (tricot is a non-irritating material).

(claim 4) Shattuck teaches the fabric band lined with friction creating material (Velcro).

(claims 6 and 11) Shattuck teaches a device to secure medical tubing to a body comprising a one-piece fabric band (the band is formed with tricot fabric) having at least a first closed loop (formed when the cincture 1 is wrapped around a user's head), a second closed loop 3, and a third closed loop (as seen in Fig. 5 when the cincture 1 wraps around the tube), wherein the first closed loop fits elastically around a portion of the body and the second and third closed loops are capable of receiving and holding medical tubing close to the body.

(claims 7 and 12) Shattuck teaches a portion of the body being a head.

(claims 8 and 13) Shattuck teaches the fabric band comprising non-irritating material (tricot is a non-irritating material).

(claims 9 and 14) Shattuck teaches the fabric band lined with friction creating material (Velcro).

4. Claims 1-4, 6-9 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,723,325 to Perry.

Perry teaches a device comprising a one-piece fabric band having **1** at least a first closed loop **2** and second closed loop **4**, wherein the first portion is capable of fitting elastically around a user's head (the device is elastic since it is capable of recovering size and shape after deformation), wherein the fabric band is soft and non-irritating (col. 3, line 41); and wherein the fabric band has a friction-creating material (inherent for the device to remain attached to a user's head).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shattuck and in further view of US 3,878,849 to Muller et al.

Shattuck teaches the second closed loop formed with heat sealing (col. 3, lines 61-62) but is silent with regards to the closed loops formed by stitching.

Muller teaches a device for holding a medical tubing to a body, wherein the device has closed loop formed with stitching 42.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the second closed loop of Shattuck with any well known attachment, such as stitching, because Shattuck teaches that the loop could be formed with any permanent attachment. Furthermore, it would have been obvious to form the first and third closed loops of Shattuck with stitches in order to provide a customize tube holder that would not require any further adjustability.

Response to Arguments

7. Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezo whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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GLENN K. DAWSON
PRIMARY EXAMINER